



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2018-0856; FRL-10014-08-Region 6]**

### **Air Plan Approval; New Mexico; Repeal of State Regulations for Particulate Matter for Lime Manufacturing Plants**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving a New Mexico State Implementation Plan (SIP) revision for the repeal of State regulations titled 20.2.20 NMAC (Title 20: *Environmental Protection*, Chapter 2: *Air Quality (Statewide)*, Part 20: *Lime Manufacturing Plants – Particulate Matter* of the New Mexico Administrative Code) that cover particulate matter emission standards for lime manufacturing plants and lime hydrators in the State of New Mexico. The EPA is approving the repeal of the regulations based on the CAA section 110(l) demonstration contained in the New Mexico submittal, which provides that the SIP revision will not interfere with attainment and maintenance of the national ambient air quality standards (NAAQS) or any other CAA requirement.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2018-0856. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g.,

Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karolina Ruan Lei, EPA Region 6, Air and Radiation Division, (214) 665-7346, [ruan-lei.karolina@epa.gov](mailto:ruan-lei.karolina@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The background for this action is discussed in detail in our July 8, 2020, proposal (85 FR 40951). In that document, we proposed to approve the New Mexico SIP revision submitted on February 13, 2019, that would repeal 20.2.20 NMAC. We proposed to approve the repeal of the regulation based on the CAA section 110(l) demonstration contained in the New Mexico submittal, which provides that the SIP revision will not interfere with attainment and maintenance of the NAAQS or any other CAA requirement.

## **II. Response to Comments**

We received one anonymous public comment on our proposal. The public comment supported more stringent requirements, even if not technically required, in order to protect the environment. We appreciate the public comment. Our action to approve New Mexico’s submission, which includes repealing the New Mexico regulations at 20.2.20 NMAC and the accompanying non-interference demonstration, is protective of the NAAQS and does not interfere with any applicable CAA requirement as is required by CAA section 110(l). Section 110(l) of the CAA provides that “. . . The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and

reasonable further progress (as defined in [CAA section 171]) or any other applicable requirement of [the CAA].”

In addition, a state can be more stringent than the CAA requirements. If a SIP submittal meets the CAA’s requirements, however, the EPA must approve it. This is made clear in CAA section 110(k)(3), which states the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements. Thus, the EPA must approve SIP submittals that meet the CAA’s requirements. We note that the commenter did not indicate reason that the SIP revision did not comply with the CAA.

As mentioned in the previous section, our reasoning and basis for our approval of the repeal of 20.2.20 NMAC are described in detail in our proposed rulemaking (85 FR 40951, July 8, 2020) and the accompanying Technical Support Document for that rulemaking, found in Docket ID No. EPA-R06-OAR-2018-0856. The summary of our findings in our proposal is as follows.

After evaluating the State's submittal, we found that the removal of 20.2.20 NMAC from the New Mexico SIP will not interfere with any applicable requirement concerning attainment and maintenance of the NAAQS as well as reasonable further progress, or any other applicable requirement of the CAA. We base our finding on the following:

- This rule, while originally intended to apply to multiple sources, now only applies to one source.
- The one source is also governed by a permit issued under the SIP-approved permitting requirements of 20.2.72 NMAC, *Construction Permits*, that requires compliance with CAA requirements, including the NAAQS.

- Modeling that shows that this one source at its full potential to emit emissions will not cause an exceedance of the NAAQS or prevention of significant deterioration (PSD) increment.
- The nearest particulate matter nonattainment area is 287 kilometers away from this source, and its nonattainment issues are primarily caused by nonanthropogenic sources. Therefore, the one subject source will not have an impact on that area.
- Likewise, the one source is located centrally in New Mexico and will therefore have a negligible impact on any surrounding state's air quality.
- Finally, review of recent monitoring data does not indicate particulate matter nonattainment problems to which the source might contribute.
- There are no other applicable requirements, such as the New Mexico Regional Haze Plan, with which emissions from the source could interfere.
- If new sources or modification at the existing source occur, these changes will have to be approved under NMED's SIP-approved permitting program to ensure that the changes will not interfere with attainment and maintenance of the NAAQS.

Therefore, the removal of 20.2.20 NMAC from the New Mexico SIP will not interfere with any applicable requirement concerning attainment and maintenance of the NAAQS as well as reasonable further progress, or any other applicable requirement of the CAA. Therefore, under CAA section 110(k)(3) the EPA must move forward with approval of this SIP revision because it meets the requirements of the Act.

### **III. Final Action**

We are approving New Mexico's February 13, 2019, SIP submittal that provides modifications to State regulations and update the federally approved New Mexico SIP

accordingly. This final rule removes 20.2.20 NMAC, *Lime Manufacturing Plants – Particulate Matter*, from the New Mexico SIP, codified at 40 CFR part 52, subpart GG, 52.1620, as we find that such a revision will not adversely affect the attainment of applicable CAA requirements.

This action is being taken under section 110 of the Act.

#### **IV. Incorporation by Reference**

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. As described in the Final Action section above, the EPA is finalizing to remove 20.2.20 NMAC, *Lime Manufacturing Plants – Particulate Matter*, from the New Mexico SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: August 26, 2020.

**Kenley McQueen,**  
*Regional Administrator, Region 6.*

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart GG – New Mexico**

#### **§52.1620 [Amended]**

2. In §52.1620 in paragraph (c), amend the table titled “EPA Approved New Mexico Regulations” by removing the entry for “Part 20” titled “Lime Manufacturing Plants-Particulate Matter” under “New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality”.